EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT

PROJECT COMPLAINT MECHANISM
ELIGIBILITY ASSESSMENT REPORT

COMPLAINT: PARAVANI HPP

REQUEST NUMBER: 2012/01

Contents

Executive Summary

On 22 December 2011, Association Green Alternative (Complainant), through its International Financial Institutions Monitoring Programs Coordinator, Mr. David Chipashvili, submitted a Complaint regarding the Paravani Hydropower Plant ("HPP") to the EBRD's Project Complaint Mechanism (PCM) Officer. The Paravani HPP is one of possibly five hydroelectric developments that may eventually be built on the Paravani River[1].

The Complaint alleges that the EBRD assessment and review process, specifically the Environmental and Social Impact Assessment (ESIA) and Environmental and Social Action Plan (ESAP), inadequately appraised and mitigated the environmental and social risks of the Paravani Hydropower Project ("Project"), in contravention of the EBRD's 2008 Environmental and Social Policy (ESP). It argues the ESIA and ESAP inadequately assessed potential downstream risks and impacts to the biodiversity of the Paravani River, flooding risks in the Khertvisi Village located near the Mtkvari River, and risks of bird mortality from Project transmission lines. It contends the mitigation measures outlined in the ESIA and ESAP fail to adequately prevent environmental and social damage from the Project in those three areas of risk, in violation of EBRD's Environmental and Social Policy (ESP), and that, while the Client agreed to undertake further studies regarding risks of flooding and bird mortality, these still had not been conducted or disclosed to stakeholders as of the time of the Complaint. It argues the ESIA lacks the requisite analysis of alternative renewable resources pursuant to the ESP, and, finally, that procedural aspects of the assessment process violated EBRD's ESP and Public Information Policy (PIP).

The PCM Eligibility Assessors find **the Complaint satisfies the PCM criteria for a Compliance Review of the Project as set out under the Project Complaint Mechanism** (PCM) Rules of Procedure (RPs). The Complaint alleges shortcomings in the process of assessing and mitigating environmental and social risks of the Project, in accordance with criteria for eligibility.

[1] Non-Technical Summary of Project ESIAs (NTS), Annex A, p 15.

Consistent with PCM Rules of Procedure, a Terms of Reference for a Compliance Review has been prepared and is included in the Report. The focus of the Compliance Review is whether or not EBRD complied with its own policy provisions. The PCM does not audit EBRD's clients; consequently, the PCM will not pose judgment on the performance of EBRD's client.

Project Complaint Mechanism (PCM)

Eligibility Assessment Report

Complaint: Paravani HPP

1. Overview of the PCM Compliance Eligibility Assessment Process

i. The Project Complaint Mechanism (PCM) provides an opportunity for an independent review of complaints from one or more individual(s) or organization(s) concerning an EBRD-funded project that allegedly has caused or is likely to cause harm. The goal is to enhance EBRD's accountability through the PCM's two functions – Problem-solving and Compliance Review.

ii. When the PCM receives a Complaint about an EBRD project, the Complaint is referred to the PCM Officer who will make a decision regarding Registration of the Complaint. Following the decision to register it, the PCM Officer will appoint a PCM Expert to work jointly with the PCM Officer to determine whether the Complaint is eligible for a Problem-solving Initiative, a Compliance Review, for both, or for neither, based upon eligibility criteria set out in Paragraphs 18, 19, and 20 of the PCM Rules of Procedure (RP). In making their determination, the Eligibility Assessors will take into account the PCM function requested by the Complainant.

iii. A PCM Eligibility Assessment for a Compliance Review is a preliminary assessment to determine whether the PCM should proceed to a Compliance Review of EBRD. The purpose of the compliance review function is to ensure compliance with policies, standards, guidelines, procedures, and conditions for EBRD involvement. The focus of the Compliance Review is on EBRD and how EBRD assured itself of project performance based upon their own policies and procedures; however, in many cases it will be necessary to review the actions of the clients and verify outcomes in the field, in assessing the performance of the project and implementation of measures to meet the relevant requirements. Through a PCM Eligibility Assessment the PCM ensures that Compliance Reviews of EBRD are initiated only for those cases that meet the PCM RP eligibility requirements.

iv. The next section describes what an Eligibility Assessment for a Compliance Review is, and what it is not. The purpose of the section is to promote a common understanding among all the parties about what to expect from the Eligibility Assessment process.

Eligibility Assessment for a Compliance Review – What it is

a. An Eligibility Assessment is a preliminary process which must be satisfied before a Complaint is deemed eligible for a Compliance Review. The eligibility criteria allow broad access to the PCM and assure the conditions under which a Compliance Review takes place are not prescriptively limited. The Assessors make sure the Complainant has standing to bring a Complaint according to the PCM Rules of Procedure and check to

confirm that the Complaint contains the required information necessary for a Compliance Review. Independent evaluation and verification of the information presented are not part of an eligibility assessment.

b. The eligibility criteria are set forth in the Project Complaint Mechanism: Rules of Procedure. Table 1 (below) summarizes the basic criteria any Complaint must meet to be eligible for a Compliance Review:

Table 1. Summary of PCM Eligibility Criteria Relevant for a Compliance Review

Requirements to be held eligible	**PCM Rules of Procedure**
The Complainant is one or more individual(s) or organization(s) seeking a Compliance Review.	PCM RP 2
The Complaint relates to a Project that has been approved for financing by the EBRD. The Bank has agreed to support the Project.	PCM RP 19 (a)
The Complaint describes the harm caused, or likely to be caused, by the Project. The Assessors, however, do not investigate or evaluate the validity of the harm described in the Complaint. That is the responsibility of the Compliance Review Expert. For eligibility purposes, it is sufficient that the Complainant identify potentially significant adverse social and environmental outcomes now or in the future.	PCM RP 19 (b)
The Complaint does not fall under any of the exclusion categories.	PCM RP 24
"If possible" requirements[2]	**PCM Rules of Procedure**
The Complaint contains an indication of which PCM function the Complainant expects the PCM to use in order to address the issues raised in the Complaint. The Complainant can request a Problem-solving Initiative, a Compliance Review or both.	PCM RP 17 and 20 (a)
The Complaint offers an indication of the outcome sought as a	PCM RP 20

[2] PCM Rules of Procedure 20 (a), 20 (b), 20 (c) and 20 (d) set out details to be included in a complaint, if possible; however, they are not strict requirements.

result of the use of the PCM process.	(b)
The Complainant has supplied copies of correspondence, notes, or other materials related to its communications with the Bank and or other Relevant Parties.	PCM RP 20 (c)
The Complainant has provided details of the Relevant EBRD Policy (i.e. the Environmental and Social Policy 2008) it believes to be at issue in the Complaint. It is sufficient that the Complainant provide these details. The Assessors do not judge the merits of the allegations in the Complaint. This task is undertaken during the Compliance Review if the Complaint is deemed eligible.	PCM RP 20 (d)
Requirements Eligibility Assessors will also consider	**PCM RP**
The Complaint relates to alleged actions or inactions that are the responsibility of the Bank; it alleges more than minor technical violations of EBRD policy. Again, no assessment of the legitimacy or validity of the claims of action or inaction is undertaken during the eligibility assessment process.	PCM RP 23

Eligibility Assessment for a Compliance Review – What it is not

i. The eligibility assessment is not a systematic process of evaluating evidence to determine whether environmental and social activities, conditions, management systems, or related information are in conformance with compliance review criteria (e.g., EBRD policies, performance requirements, guidelines, procedures and standards whose violation might lead to adverse social or environmental consequences). The Eligibility Assessment does not involve the verification of evidence from the Bank, the Client or the Complainant.

ii. The task of investigation, assessment, making judgments and findings about the merit of the Complaint is the purview of the Compliance Review. Whether EBRD is or is not in compliance with its own policies and procedures can only be determined through the process of a Compliance Review, which is a separate process with significantly different criteria from those of an eligibility assessment procedure.

iii. As a result, it is quite possible that a Complaint could well meet the eligibility criteria for a Compliance Review, and based on the subsequent Compliance Review, the Bank could be found to be in compliance with relevant EBRD policies and procedures.

iv. No party should reach any conclusions about whether or not EBRD is or is not in compliance with its policies or whether a project is out of compliance based upon the PCM's decision that a Complaint is eligible for a compliance review. It is important that no party misinterpret the PCM's decision to investigate as an indication that the PCM agrees with the claims presented in a Complaint.

v. These points are discussed in more detail in the table below.

Table 2. What the Eligibility Assessment does not do

i. Does not assess the merit of the concerns expressed by the Complainant.
ii. Does not judge the validity of the evidence presented by the Complainant, the Bank or the Client related to potentially significant adverse social and environmental outcomes now or in the future.
iii. Does not verify allegations or evidence presented in the Complaint. For example, as long as the Complaint describes the harm the Complainant perceives has been caused, or is likely to be caused, by the Project, the Complaint meets the requirement for harm under PCM RP 19 (b). The eligibility assessors do not analyze or verify whether the harm referred to in the Complaint, is or is not likely as a result of actions or inactions of EBRD. The process of analysis and verification happen once the Complaint meets the requirements for a Compliance Review.
iv. Makes no judgment that tests the value of undertaking a compliance review and whether EBRD readily can document compliance.
v. Does not assess whether the cause of adverse social and environmental outcomes can be readily identified and corrected through the intervention of the project team without a detailed investigation of the underlying causes or circumstances.
vi. Does not make findings about whether there is evidence or perceived risk of adverse social and environmental outcomes that indicates that policy provisions may not have been adhered to or properly applied.
vii. Does not evaluate evidence that indicates that EBRD provisions, whether or not complied with, have failed to provide an adequate level of protection.

2. Factual Background

i. On 22 December 2011, Association Green Alternative (Complainant), through its International Financial Institutions Monitoring Programs Coordinator, Mr. David Chipashvili, submitted a Complaint regarding the Paravani Hydropower Plant ("HPP") to the EBRD's Project Complaint Mechanism (PCM) Officer. On 4 January 2012, the Complaint was registered with the PCM Officer pursuant to PCM Rules of Procedure (RP) 10. Notification of registration was sent to the Complainant and Relevant Parties pursuant to PCM RP 12, and the Complaint was posted on the PCM website and listed on the on-line PCM Register, in accordance with PCM RP 13. PCM Expert Susan Wildau was appointed as an Eligibility Assessor to conduct an Eligibility Assessment of the Complaint jointly with the PCM Officer, pursuant to PCM RP 17.

ii. The Project at issue is a hydropower project being developed by Georgia Urban Energy (GUE) on the Paravani River, in southeast Georgia close to the Turkish Border. It includes an 87-megawatt run-of river hydropower plant (HPP) and a 33km transmission line with 105 towers connecting it to the national grid[3]. The HPP is designed to divert up to 90 percent of the average annual flow on the Paravani River through a 14.2km conveyance tunnel to a powerhouse on the Mktvari River. The water would then be released back into the Mktvari just upstream from the village of Khertvisi[4]. The Project will supply electricity to the Georgian market in the three winter months (expected to be in December, January and February) and export power to the Turkish market in the remaining nine months of the year.

iii. In accordance with Georgian law, Georgian Urban Energy LTD, through its technical consultant SRF Gamma, prepared an ESIA in 2009 for the HPP and another in 2010 for the transmission line[5]. GUE approached EBRD and IFC for financing. EBRD classified the Project as Category A[6]. In accordance with EBRD policies, GUE arranged for SRF Gamma to prepare a Non-Technical Summary of the ESIAs (NTS), an ESAP, and a Stakeholder Engagement Plan (SEP). Following preparation of the SEP, the Client arranged a roundtable with stakeholders to discuss the HPP[7]. Based on the concerns expressed, EBRD requested that GUE re-evaluate the risks of flooding and bird mortality and GUE agreed to do so[8].

iv. EBRD approved the Paravani Project for financing on June 14, 2011**.** The Bank is providing up to a US$ 44 million senior loan and up to 10% equity equivalent of approximately US$ 5 million investment to the Company, out of an estimated total project cost of $156.5 million.

[3] Non-Technical Summary of Project ESIAs (NTS), at 1-3.
[4] *Ibid.*
[5] *Ibid.* at 1.
[6] *See* Environmental and Social Policy (May 2008) Performance Requirement (PR) C(20) at 6 ("A proposed project is classified as Category A when it could result in potentially significant and diverse adverse future environmental and/or social impacts and issues which, at the time of categorisation, cannot readily be identified or assessed and which require a formalised and participatory assessment process carried out by independent third party specialists in accordance with the PRs."), and 12-13, Annex 1.
[7] Green Alternative Complaint, registered 4 January, 2012 ("Complaint"), at 2.
[8] The ESIA and the Environmental Impact Permit issued by the Georgian Ministry of Environmental Protection in 2011 also referenced the need for an evaluation of flooding risks.

Project construction activities have begun. As of April 2012, more than 70 percent of the tunnel has been completed[9]. Road construction has also started. Construction work on the transmission lines, however, is not scheduled to begin until 2013[10].

3. Steps Taken in Determining Eligibility

i. The Eligibility Assessors have examined the Complaint, including the supporting documents provided by the Complainant, to determine whether it satisfies the applicable eligibility criteria of the PCM Rules of Procedure. They checked the online availability of the documents cited in the Complaint for the purposes of PCM RP 20 (C). They reviewed the Responses received by the Bank and the Client as well as various Project documents produced by the Bank. In addition, they held separate conversations, primarily by telephone, with the Complainant, relevant Environmental and Social staff within the Bank, the Client, and the Bank Operations Leader[11].

4. Summary of the Parties' Positions

a. Complainant/Green Alternative

Inadequate Assessment and Mitigation of Environmental Impacts to River

i. Green Alternative alleges the Project ESIAs and ESAP inadequately appraised the ecological risks to the Paravani River. The Complaint contends the assessment fell short of EBRD environmental standards by relying on the "Tennant" calculation to determine how much water should be kept in the River to maintain a baseline of ecological health. According to the Complaint, the Tennant method was developed in the 1970s and is one of the most widely-used methods to calculate the percentage of a river's average annual flow that is necessary to sustain different levels of ecosystem and habitat quality, having been "adopted" by over 25 countries, including 16 states in the United States[12]. The Complaint argues that, applying the Tennant method prior to Board approval without considering site-specific data such as multi-year, multi-seasonal flow variations or specific flow levels that are required to sustain various species at different times of the year, was contrary to EBRD's commitment to ensure environmental assessments rely on recent information and appropriate levels of detail and use best practices to measure impacts on biodiversity[13].

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[9] Client interview, April 5, 2012.

[10] Client comments presented August 29, 2012 on draft EAR.

[11] The Assessors spoke with relevant Environment and Social Department staff on March 12, 2012, and with the Complainant on April 5th. In a separate telephone call on April 5th, the Assessors communicated with the Client and the Operations Leader from the Bank who attended the session in person.

[12] Complaint at 2.

[13] ESP PR 1(5) states "the appraisal process [of, *inter alia*, environmental and social impacts] will be based on recent information, including an accurate description and delineation of the…social and environmental baseline data at an appropriate level of detail." PRI 6(6) states "In planning and implementing impact assessments where biodiversity issues are a key focus, clients should refer to best-practices guidelines on integrating biodiversity into impact assessment" and that "the Bank is guided by and supports the implementation of applicable international law and conventions and relevant EU directives." See Complaint at 4.

Further, by accepting a "fair or degrading"[14] level of reserved River flow, the Complaint argues the Project is likely to significantly impact the biodiversity of the River. While this level of impact may be permissible under Georgian law, it argues this violates EBRD's policy of using regional environmental standards where they exceed those of the host country[15], particularly in light of the global Convention on Biodiversity and the European Union's Water Framework Directive, claiming neither was properly factored into the assessment process[16].

Inadequate Assessment and Mitigation of Impact to Birds

ii. The Complaint also alleges the ESIA and ESAP inadequately appraised the risk to migrating birds from the Project's transmission lines and contained inadequate mitigation measures in light of those risks, e.g. bird diverters, conductor separation or re-design of the transmission towers. Although EBRD has asked the Client to re-evaluate bird mortality, the Complaint claims the Client has not yet publicized that study or discussed the results with stakeholders to determine appropriate mitigation measures, despite its claim that Project construction has allegedly begun[17],[18]. It argues this violated the ESP's emphasis on taking a precautionary approach in the appraisal process to potential impacts on biodiversity[19].

Inadequate Assessment and Mitigation of Social Risks – Flooding and Restricted Access to Grazing

iii. The Complaint further alleges the ESIA and ESAP inadequately appraised and mitigated two social risks of the Project: (1) the risk of flooding the village of Khertvisi on the Mktvari River, between the powerhouse and the confluence with the Paravani; and (2) the economic impacts on community members from restricting access to pasture lands during and after Project construction[20]. As with the issue of bird mortality, the Complaint states that, while EBRD required the Client to re-evaluate the risks of flooding on the Mktvari River downstream of the powerhouse where the large amount of water diverted from the Paravani River will be entering the Mktvari River, at the

[14] Complaint at 2. "Fair or degrading" is part of the categorization scheme developed by Tennant. Tennant, D. L., 1975. Instream flow regimens for fish, wildlife, recreation and related environmental resources. U.S. Fish and Wildlife Service, Billings, Mont.

[15] ESP PR 3(8) states: "When host country regulations differ from the levels and measures presented in EU environmental requirements or requirements agreed pursuant to paragraph 7, projects will be expected to meet whichever is more stringent."

[16] Complaint at 4. The Complaint states that, while the ESIA for the HPP listed the Convention on Biological Diversity as a relevant international convention, and its Subsidiary Body on Scientific, Technical and Technological Advice recommends environmental flow assessments be conducted to ensure downstream releases protect "ecosystem integrity or community livelihoods," this standard was not made part of the assessment in this case. It also notes the omission of the European Commission's 2000 Water Framework Directive, despite it being what Complainant describes as the most significant piece of international legislation regarding surface water biodiversity, directing member states to prevent ecological deterioration in any body of water and suggesting a comprehensive approach to calculating environmental flow releases.

[17] Complaint at 5.

[18] Complaint at 5.

[19] Ibid (citing ESP PR 6(6)).

[20] *Ibid.* at 5-6.

time of the Complaint the Client had not yet publicized that study or discussed the results with stakeholders to determine appropriate mitigation measures[21], contrary to the ESP's Performance Requirement (PR) 4(7).[22] According to the Complaint, the River currently floods its banks where it passes the village almost every spring due to the lack of berms and other protections, and local residents fear the Project will only magnify the existing problem, even if the River level is only raised by 10 cm on average per year as GUE has projected.[23]

The Complaint also contends the assessment failed to consider or properly mitigate the restricted access to pasture lands due to project construction, which has prevented individuals from grazing their livestock[24]. The Client and Bank question the justification for the claim, noting that the construction works on the transmission line have not started; however, the complaint does not specify what type of project construction is restricting access to pasture lands.

Inadequate Analysis of Renewable Energy Alternatives

iv. The Complaint alleges the assessment process also failed to comply with PR 1(9), which requires an analysis of other feasible alternatives to the Project. The Complainant argues that, while the Georgian ESIA mentions renewable alternatives for generating energy, it does not include any substantive or financial analysis of alternatives other than the proposed hydropower project.

Inadequate Project Documentation

v. Finally, the Complaint argues that the fact that the project ESIAs were available only in Georgian, and not English, casts doubt on EBRD's ability to properly evaluate the project, caused EBRD to over-rely on Georgian consultants, and made it difficult for international experts to comment on the assessment process. In addition to internal quality control it argues this contravened EBRD's Public Information Policy (PIP) C(3) which highlights EBRD's willingness to listen to third parties (such as international NGOs) so as to benefit from their contribution to its work, and PR 10 of the ESP, which underscores EBRD's commitment to disclosure, participation and consultation with stakeholders in any project, particularly in the case of Category A projects[25].

[21] According to written comments from Bank staff received September 4, 2012 and written comments from the Client received August 29, 2012, initial results of hydrological surveying and modeling were presented to the Khertvisi community on 28 June 2012, and the survey will finish in the autumn of 2012. Another meeting is scheduled for late autumn to present final conclusions from these studies. The Client will then submit information to the design team to develop mitigation measures for critical locations.

[22] *Ibid.* at 6. ESP PR 4(7) requires the Client to evaluate and attempt to prevent risks to health and safety of the affected community.

[23] Complaint at 5.

[24] *Ibid.* at 6.

[25] *Ibid.* at 6-7.

b. Bank Response

Inadequate Assessment and Mitigation of Environmental Impacts to River

i. The Bank states that the design of the project provides significant flexibility to send additional water down the Paravani if needed to protect the River's ecological system or to reduce the water entering the conveyance tunnel if that is needed to reduce the risk of a flood . The latter point is being evaluated as part of the "flooding study". The Bank explains that the Project incorporates the flexibility to adjust minimum flows on the Paravani River if it is determined that the level of flows would have an unacceptable impact on fish or aquatic habitat.

ii. The Bank maintains that the use of the widely adopted Tennant Method, combined with desktop studies of fish and communities and aquatic ecosystem, were sufficient for the ESIA's assessment of potential impacts. The Bank further notes that the agreed ESAP requires the client to complete field studies to characterize fish populations in the river, and these studies are underway. This in turn will allow it to be determined if there are future changes in fish populations and the aquatic ecosystem, and will allow regimes to be modified if such changes are attributable to the project.

Inadequate Assessment and Mitigation of Impact to Birds

iii. Regarding the impact of the transmission lines on birds, the Bank notes that although the construction works on the transmission line have not yet started, the NTS and ESIAs concluded such impacts would be minor because of the height and spacing of the lines, and explained that the ESAP requires monitoring of migrating birds for two years to verify these predicted impacts[26]. It also notes that, due to the concern expressed at the May 2011 public consultation, EBRD requested, and GUE agreed, to conduct a re-evaluation of these risks to migrating birds and to disclose the results[27].

Inadequate Assessment and Mitigation of Social Risks – Flooding and Restricted Access to Grazing

iv. Likewise, the Bank states that GUE has agreed to address concerns about possible flooding of the Mktvari and village of Khertvisi by observing water levels in the River and developing "appropriate" mitigation measures, which GUE will present to the local community. This commitment arose following disclosure and consultations, and in addition to the commitments in the ESAP[28]. In 2012, Gamma, a GUE consultant, is re-reviewing historical data and collecting additional hydrologic data to chart the hydrograph from the Mktvari and develop a graphical presentation of the maximum predicted flooded zone – how much and where land may be at risk of inundation under

[26] ESAP 6.9 requires GUE to monitor bird mortality; if bird mortality is "excessive," it requires GUE to develop a bird protection plan.
[27] Bank Response at 4.
[28] *Ibid.*

specific flood scenarios. Interim results were presented to residents of Khertvisi on 28 June 2012 and final results will be presented when available, along with any actions that may be needed to prevent flooding or compensate for increased flooding[29]. The Bank acknowledges this information should have been included in the ESAP, and notes it is instead included in a supplemental agreement with the Client.

v. The Bank states that the disruption to individuals' access to grazing lands occurred for a short period during road construction; GUE reported to the Bank that livestock could not cross the existing road while it was being upgraded due to frequent movement of heavy equipment. Further, the Bank notes that the SEP (although not the NTS) cited temporarily limited access and hindrance of freedom of movement of people during construction as a potential impact. The Bank states it is requiring GUE, pursuant to ESP PR 5, to review the disruption caused to individuals' access to grazing pastures and identify whether this met the requirements of remuneration under ESP PR 5 (i.e., whether the impacts were temporary and limited or affected livelihoods and require further attention). The Bank states it is carefully monitoring GUE's compliance with this mandate[30].

Inadequate Analysis of Renewable Energy Alternatives

vi. In response to the Complainant's concerns that the assessment failed to analyze alternative renewable sources of energy, contrary to PR 1(9) of the ESP, the Bank argues PR 1(9) requires an analysis of technically and financially feasible alternatives, and that solar, wind and other alternatives were not considered feasible. Further, the Bank explains that the assessment process is not the appropriate place to discuss policy-level questions such as national energy priorities, but that the ESIA in this case did consider and verify findings of a 2007 costs-benefit analysis of the Paravani Project in light of other hydropower options[31].

Inadequate Project Documentation

vii. The Bank contends that releasing the ESIAs in the local language complies with the requirements of the ESP. Further, the Bank states it conducted its own environmental and social due diligence over the course of hundreds of hours and extensive discussions over more than a year, and did not overly rely on consultants to ensure Bank policy was satisfied. The Bank did not believe the PIP was relevant, as it does not bear directly on the required language for an ESIA.

viii. Lastly, the Bank states its belief that, with the exception of the English-language ESIA, the outcomes requested by the Complainant are already in process, either as a result of ESAP requirements or agreements with the Client[32].

[29] Bank comments presented September 4, 2012 on Draft EAR.
[30] *Ibid.* at 39.
[31] *Ibid.*
[32] See Bank comments of 4 September, 2012.

c. Client/GUE Response

Inadequate Assessment and Mitigation of Environmental impacts to River

i. GUE states that it can be challenging to determine an appropriate amount of water to leave as retained flow. It explains that the limited time allowed by the ESIA process does not allow extensive site-specific flow observation and survey, and that the Tennant method[33] provides a reasonable calculation of desired reserved flow, given these limitations and the lack of up-to-date hydrological information for the Paravani River[34]. In accordance with the ESAP, as well as conclusions of the ESIA and permit conditions, GUE states it has begun measuring the flows of the River over time and will adjust the reserved flow, if necessary, according to its findings during the next several years of monitoring. In addition, GUE has begun a multi-season, baseline habitat study, pursuant to the ESAP, and maintains it will ensure the lowered flow has a "minimal" effect on the habitat and biodiversity of the River[35].

Inadequate Assessment and Mitigation of Impact to Birds

ii. GUE dismisses concerns about bird mortality, arguing the height of the towers and spacing of the transmission lines was designed to minimize impacts on birds. It states the ESIA requires it to monitor impacts on birds to decide if additional mitigation is needed, and notes a re-evaluation of bird activity will be done during this year's spring and autumn migrations. GUE has clarified that the conclusions of the study will be made accessible to interested parties.

Inadequate Assessment and Mitigation of Social Risks – Flooding and Restricted Access to Grazing

iii. The Client reports community members have expressed concerns about the risk of flooding on the Mktvari River ever since an initial stakeholder meeting in 2009. It states the ESAP requires additional studies to address these concerns and further reports the ESIA and the Environmental Impact Permit, issued by the Georgian Ministry of Environmental Protection in 2011, reference the requirement for additional studies to determine flooding risk and possible mitigation measures[36]. The NTS also mentions this

[33] The Client notes in its comments of August 29, 2012 concerning the Draft EAR that there are additional water sources feeding the river between the regulator area and the Khertvisi Station. In April and May, the average flow is 5-10 m3 greater than the maximum flow that can be diverted to the energy tunnel for power generation. Consequently, the average sanitary flow can be considered to be more than 10% of the year's average.

[34] Georgia Urban Energy Response to Complaint of Green Alternative, dated January 30, 2012 ("Client Response"), at 1-3.

[35] *Ibid.* at 3-4.

[36] ESAP 3.11 requires GUE to "implement a monitoring program in the tailrace of the turbines after the power house and up to the Mktvari River as required by Georgian authorities." The ESAP lists the source of this requirement as PR 3 (Pollution Prevention and Abatement). The Client states the purpose of the action is to address the flooding issues and suggest relevant mitigation measures once the results of the studies are analyzed. GUE's intention to assess risks and provide required mitigation was confirmed to EBRD, and a tentative schedule for disclosing the results of the study have been agreed to with the Bank.

concern and states "flows in the Mktvari will be observed "to evaluate the flooding risk"[37] GUE states in the Response it will identify necessary mitigation measures based on its findings from these observations[38] and maintains a full scale evaluation was not feasible to conduct in time to incorporate findings into the ESIA as the timeframe for preparing the assessment is generally limited. There is no mention of disclosure to local residents or other stakeholders in the documents noted above; however, GUE clarified that two meetings with local community residents have been planned to discuss the flooding issue and the results of the study. Preliminary data was presented to the community at the first meeting which took place at the end of June 2012. Meeting minutes, the presentation and results from the first phase of the hydrological survey have been sent to EBRD. A second meeting is planned for late autumn to present final conclusions from the study, after the hydrological survey and modeling are completed. Once the date has been confirmed, the community will be informed and invited. The Client also plans to submit final study results to the design team within this same time period. The design team will use the results to develop mitigation measures for critical locations[39].

iv. Regarding access to grazing, the Client acknowledges there were restrictions on access to pasture lands in Kvarsha, but maintains they were temporary. It does not mention the issue of mitigation or the general requirements of PR 5[40]. In its response to the Draft EAR, the Client further explains that the temporary restriction to access resulted in no adverse impacts (e.g., loss of income or livelihood, loss of assets, need for displacement).

Inadequate Analysis of Renewable Energy Alternatives

v. GUE argues there was no need to discuss alternative renewable resources in the assessment process, as this was done in the 2007 Strategic Environmental Assessment conducted by international agencies, with the Paravani project being identified as the most cost-effective and least socially and environmentally detrimental of the hydropower options[41].

Inadequate Project Documentation

vi. In terms of the concerns raised about project documentation and EBRD review, GUE notes the project review included joint site visits, on-going discussions with EBRD experts, and provision of additional information and excerpts from the ESIA in English. It also emphasizes the other assessment documents were in English, including the ESAP, SEP and NTS[42].

[37] NTS at 9.
[38] Bank Response at 4. More recently the Client has updated the Eligibility Assessors regarding the status of the study. It is currently underway and final results from the survey and modeling activities are expected in late autumn.
[39] Client comments on draft EAR submitted August 29, 2012.
[40] *Ibid.*
[41] *Ibid.*; NTS at 1.
[42] The Non-Technical Summary of the ESIAs, however, refers back to the Georgian ESIAs for "more detailed information on the project, baseline conditions, potential impacts and mitigation measures." NTS at 1.

5. Determination of Eligibility

i. The Complaint was submitted by the organisation Green Alternative through its representative Mr. Chipashvili. The Complainant has standing to make the Complaint according to PCM RP 2 which provides that 'one or more individual(s) or Organisation(s) may submit a Complaint seeking a Compliance Review'.

ii. The Complaint relates to the Paravani Hydropower Project that was approved for financing by the EBRD Board of Directors in June, 2011[43]. Consequently the Complaint satisfies PCM RP 19a requiring that it 'relate to a Project that has either been approved for financing by the Board or by the Bank committee which has been delegated authority to give final approval to the Bank financing of such Project'.

iii. As outlined in the summary of Complainant's position, the Complaint describes the following environmental and social harm that could result from the alleged policy violations, pursuant to PCM RP 19 (b).

- Use of the Tennant method without incorporating site-specific hydrological data, and inadequate assessment of what constitutes a "fair/degrading" impact from reduced flow, could increase adverse impacts on biodiversity in the Paravani River.

- Inadequate assessment and mitigation of effects from transmission lines and towers could result in significant bird mortality along the migration corridor.

- Inadequate assessment of the hydrological effects and inadequate mitigation could result in flooding of the village of Khertvisi.

- Failure to properly assess and mitigate the restricted access to pastures could harm people's livelihoods.

- The lack of a proper alternatives analysis forces the discussion to the proposed Project, rather than providing an examination of alternatives, resulting in the potential environmental and social harms discussed in the complaint.

- The lack of English ESIAs resulted in over-reliance on the Client's verbal and written representations and prevented the Bank and international NGOs from properly

[43] Bank Response at 2.

evaluating the Project and ensuring compliance with relevant EBRD policy, leading to adverse impacts that might otherwise be avoided[44].

iv. The Complaint relates to actions or inactions that are the responsibility of the Bank, in conformity with the requirement of PCM RP 23 (a). The Complaint states there was inadequate appraisal of environmental and social risks and inadequate mitigation proposed during the assessment process, including the ESIAs, NTS and ESAP. Under EBRD's Environmental and Social Policy (ESP), the Bank is responsible for ensuring the appraisal and monitoring process of any Bank-funded project adheres to EBRD's environmental, social, and procedural standards [45]. This Complaint relates to potential non-compliance with a number of ESP Performance Requirements, which are the Bank's responsibility to enforce[46]. The following policies are identified in the Complaint, pursuant to PCM PR 20(d).

Inadequate Assessment and Mitigation of Environmental and Social Risks - Ecological Flow in the Paravani River, Social Impacts, Impacts on Bird Mortality from Transmission Lines

1. <u>Ecology and Biodiversity of Paravani River</u>

- **PR 1(5**): "The appraisal process will be based on recent information, including an accurate description and delineation of the client's business or the project, and social and environmental baseline data at an appropriate level of detail".

- **PR 3 (8): "**When host country regulations differ from the levels and measures presented in EU environmental requirements or requirements agreed pursuant to paragraph 7, projects will be expected to meet whichever is more stringent".

- **PR 6(2):** "The Bank is guided by and supports the implementation of applicable international law and conventions and relevant EU directives".

- **PR 6(6)**: "Through the environmental and appraisal process, the client will identify and characterise the potential impacts on biodiversity likely to be caused by the project. The extent of due diligence should be sufficient to fully characterise the risks and impacts, consistent with a precautionary approach and reflecting the concerns of relevant stakeholders… In planning and implementing impact assessments where biodiversity issues are a key focus, clients should refer to best practice guidelines on integrating biodiversity into impact assessments".

- **PR 6(8)**: **"**The client will need to identify measures to avoid, minimise or mitigate potentially adverse impacts and, where appropriate and as a last resort, propose

[44] GA claimed on email of 4/19/11 that needs ESIA in English for purpose of ensuring that their comments to the EBRD coincide with the English version of the ESIA provided to EBRD.

[45] See ESP pp. 1-5, including ¶ 15, which provides:

"EBRD's environmental and social appraisal includes consideration of three key elements:
(i) the environmental and social impacts and issues associated with the proposed project;
(ii) the capacity and commitment of the client to address these impacts and issues in accordance with this Policy; and
(iii) the role of third parties in achieving compliance with this Policy."

[46] *See ibid.* at ¶¶ 3, 14, 28.

compensatory measures, such as biodiversity offsets, to achieve no net loss or a net gain of the affected biodiversity".

- **PR 10(17)**: "Projects classified as Category A could result in potentially significant and diverse adverse future environmental and/or social impacts that cannot be readily identified, assessed and mitigated and therefore require a formalised and participatory assessment process. Disclosure and consultation requirements are built into each stage of this process. Clients shall ensure meaningful dialogue with affected parties and facilitate their informed participation in the decision-making process, in accordance with paragraphs 12 to 16 above. Informed participation involves organised and iterative consultation, leading to the client's incorporating into their decision-making process the views of the affected parties on matters that affect them directly such as proposed mitigation measures, the sharing of development benefits and opportunities, and implementation issues".

2. Social Impacts

Flooding

- **PR 4(7)**: "The client will identify and evaluate any potential impacts to the health of the affected community during the construction, operation, and decommissioning of the project and will establish preventive measures and plans to address them in a manner commensurate with the identified impacts. These measures will favour prevention or avoidance of risks over minimization and reduction".

- **PR 10(17)**: "Projects classified as Category A could result in potentially significant and diverse adverse future environmental and/or social impacts that cannot be readily identified, assessed and mitigated and therefore require a formalised and participatory assessment process. Disclosure and consultation requirements are built into each stage of this process. Clients shall ensure meaningful dialogue with affected parties and facilitate their informed participation in the decision-making process, in accordance with paragraphs 12 to 16 above. Informed participation involves organised and iterative consultation, leading to the client's incorporating into their decision-making process the views of the affected parties on matters that affect them directly such as proposed mitigation measures, the sharing of development benefits and opportunities, and implementation issues".

Access to pastures

- **PR 5(39):** "If a transaction of the types described in paragraph 7 causes loss of income or livelihood, through for example interruption or elimination of a person's access to his/her employment or productive assets, regardless of whether or not the affected people are physically displaced, the client will…Promptly compensate economically displaced persons for loss of assets or access to assets at full replacement cost".

- **PR 10(17)**: "Projects classified as Category A could result in potentially significant and diverse adverse future environmental and/or social impacts that cannot be readily

identified, assessed and mitigated and therefore require a formalised and participatory assessment process. Disclosure and consultation requirements are built into each stage of this process. Clients shall ensure meaningful dialogue with affected parties and facilitate their informed participation in the decision-making process, in accordance with paragraphs 12 to 16 above. Informed participation involves organised and iterative consultation, leading to the client's incorporating into their decision-making process the views of the affected parties on matters that affect them directly such as proposed mitigation measures, the sharing of development benefits and opportunities, and implementation issues".

Impacts on Bird Mortality from Transmission Lines

- **PR 6(6)**: "Through the environmental and appraisal process, the client will identify and characterise the potential impacts on biodiversity likely to be caused by the project. The extent of due diligence should be sufficient to fully characterise the risks and impacts, consistent with a precautionary approach and reflecting the concerns of relevant stakeholders… In planning and implementing impact assessments where biodiversity issues are a key focus, clients should refer to best practice guidelines on integrating biodiversity into impact assessments".

- **PR 6(8)**: **"**The client will need to identify measures to avoid, minimise or mitigate potentially adverse impacts and, where appropriate and as a last resort, propose compensatory measures, such as biodiversity offsets, to achieve no net loss or a net gain of the affected biodiversity".

- **PR 10(17)**: "Projects classified as Category A could result in potentially significant and diverse adverse future environmental and/or social impacts that cannot be readily identified, assessed and mitigated and therefore require a formalised and participatory assessment process. Disclosure and consultation requirements are built into each stage of this process. Clients shall ensure meaningful dialogue with affected parties and facilitate their informed participation in the decision-making process, in accordance with paragraphs 12 to 16 above. Informed participation involves organised and iterative consultation, leading to the client's incorporating into their decision-making process the views of the affected parties on matters that affect them directly such as proposed mitigation measures, the sharing of development benefits and opportunities, and implementation issues".

Alternate Renewable Sources

- **PR 1(9)**: The "assessment will include an examination of technically and financially feasible alternatives to the source of such impacts, and documentation of the rationale for selecting the particular course of action proposed".

Project Documentation-Availability of Project Documents in English

- **PR 10** (Information Disclosure and Stakeholder Engagement): "Stakeholder engagement is an ongoing process involving (i) the client's public disclosure of appropriate information so as to enable meaningful consultation with stakeholders, (ii) meaningful consultation with potentially affected parties, and (iii) a procedure or policy by which people can make comments or Complaints. This process should begin at the earliest stage of project planning and continue throughout the life of the project".

- **PIP C(3)** (Willing to Listen and Receptive to Comment): "Through its commitment to open communication, the Bank demonstrates its willingness to listen to third parties so as to benefit from their contributions to its work in fulfilling its mandate".

v. The alleged violations of EBRD's polices in the Complaint are more than technical. PCM RP 23 (b). As discussed above, they relate to alleged failures to assess and mitigate potentially significant environmental and/or social impacts and to properly engage with key stakeholders. Such concerns cannot be considered only technical particularly in light of this being a Category A project[47].

vi. Although the Complaint is concerned about a lack of disclosure and consultation regarding aspects of the assessment, it does not allege a failure by the Bank to monitor Client commitments pursuant to Bank policy. Thus, PCM RP 23 (c) appears not to be relevant.

vii. The allegations are specific to the Project rather than concerning EBRD policies in general, thus satisfying PCM RP 24(e) which states that a Complaint cannot relate to 'the adequacy or suitability of EBRD policies'.

viii. The Complaint seeks a Compliance Review. PCM RP 20 (a). Specifically, it requests the following outcomes pursuant to PCM RP 20 (b), which states a Complaint 'should also include, if possible … an indication of the outcome(s) sought as a result of use of the PCM process'[48]:

- Verification of a) whether the project ESIA correctly assesses environmental and social risks; b) whether the proposed mitigation measures effectively prevent possible environmental and social damage by the Paravani HPP project; and c) whether the ESIA documentation complies with the Performance Requirements and general commitments of EBRD's Environmental and Social Policies.

[47] *Ibid.* at 6, ¶ 20, PR 10(17).

[48] Complaint at 7. While it is important to note that some of the outcomes requested by Complainant may now be occurring in practice. See note 29 above and related text, the focus in the Complaint is on the Bank's compliance with EBRD policies in the early assessment process (ESIA and ESAP). The Complaint raises both procedural and substantive issues that may or may not be obviated by Client's subsequent actions. These questions are reflected in the TOR below.

- The requirement of a site-specific method (rather than the Tennant method) derived from relevant field data to determine the optimal water flow to support fish, flora, and fauna; define acceptable downstream environmental impacts on the Paravani River from the HPP; and protect the River ecosystem. The method should ensure minimal impact on ecosystems of the River and comply with the Convention on Biological Diversity and the Water Framework Directive. The principle of a river specific method to determine optimal flow to support an ecosystem (rather than the Tennant method) should serve as a precedent and best practice for future hydropower projects funded by the Bank and/or developed in Georgia.

- Disclosure of the Client's re-evaluations of (a) projected bird mortality from the proposed transmission lines and (b) risks of the HPP flooding the village of Khertvisi[49].

- Public discussions concerning these additional studies and any proposed mitigation.

- An English translation of the Project ESIA.

ix. The Complaint includes copies of the Complainant's correspondence with the Client and EBRD representatives beginning in December 2010 regarding concerns about the Project and compliance with relevant EBRD policy. It therefore conforms with PCM RP 20c which provides that an eligible Complaint should, if possible, include 'copies of all correspondence, notes, or other materials related to communications with the Bank or other Relevant Parties'.

x. The Assessors have considered the Complaint, the Bank's Response, the Client's Response, key documents such as the Project ESIA, the non-technical summary of the ESIAs, the ESAP, correspondence between the Complainant and Bank and Client representatives, meeting minutes, and relevant EBRD policies. PCM RP 25. The Experts have also consulted with the Complainant, the Bank and the Client in the process of determining whether the Complaint satisfies the criteria for a Compliance Review under the PCM RPs.

6. Referral of Complaint to PCM Compliance Review

6.1 Eligibility of the Complaint is determined in accordance with PCM RPs 17-29.

6.2 The Eligibility Assessors have concluded that:

[49] In its comments submitted 4 September, 2012, the Bank states that both these studies are to be disclosed when the information, which is currently being acquired, has been evaluated and any further mitigation needed has been identified.

i. the Complaint relates to a Project that has been approved for financing by the EBRD. The Bank has agreed to support the Project– and has not withdrawn it– and thereby satisfies the requirements of PCM RP 19 (a);

ii. the Complaint describes the harm caused, or likely to be caused, by the Project as per PCM RP 19 (b). Here, it is important to note that recent EARs prepared by the PCM, in particular the EAR on the Ombla Hydropower Project Complaint, conclude that specific material harm need not be established in a case of an allegations of a failure to comply with a Bank policy, as such failure would inherently impact on the integrity of the relevant decision-making process, and thus on the quality and legitimacy of the decision taken. Therefore, harm can be presumed in the case of any such instance of non-compliance[50];

iii. the Complaint contains an indication of which PCM function the Complainant expects the PCM to use in order to address the issues raised in the Complaint, namely a Compliance Review (PCM RP 20 (a));

iv. the Complaint offers an indication of the outcome sought as a result of the use of the PCM process (PCM RP 20 (b));

v. the Complainant has supplied copies of correspondence, notes, or other materials related to its communications with the Bank and or other Relevant Parties (PCM RP 20 (c)); and

vi. the Complainant has provided details of the Relevant EBRD Policy it believes to be at issue in the Complaint (PCM RP 20 (d)).

6.3 Pursuant to PCM RP 22, the Eligibility Assessors have established that the Complainant has made good faith efforts to address the issues raised in the Complaint by, in particular raising the issue with the Management of the Bank. The Eligibility Assessors have considered the status of the technical studies currently being undertaken and have concluded that these recourses do not have any implications for the PCM eligibility assessment, to the extent they do not address the claims regarding the inadequate appraisal of environmental and social risks, as well as the claims of inadequate mitigation measures developed in the final version of the project's ESIA and ESAP.

6.4 In determining the Eligibility, the Eligibility Assessors have also, in line with PCM RP 23, established that the Complaint relates to alleged inactions that are the responsibility of the Bank; and that it alleges more than minor technical violations of EBRD policy.

6.5 The Complaint does not fall under any of the categories provisioned in PCM RP 24.

[50] Eligibility Assessment Report re Ombla HPP (Request No. 2011/06), para. 28. See further Ombla HPP EAR, para. 35.

6.6 Consequently, based on an evaluation of the eligibility criteria set out in the PCM RPs 17-24, and on the analysis of the relevant documents including the Complaint, Bank Response, Response by the Client and other relevant project documentation submitted by the Bank and the Client, the Eligibility Assessors declare the Complaint **eligible** for a **Compliance Review**.

6.7 In line with PCM RP 28(b), the terms of reference for a Compliance Review, identifying the type of expertise required to carry out the review, as well as the scope and time frame for the review, are presented in the following section.

COMPLAINT: PARAVANI HYDROPOWER PROJECT (HPP)
Request Number: 2012/01

Terms of Reference (TOR) for the Compliance Review

Compliance Review Expert

1. The Compliance Review Expert shall conduct the Compliance Review in a neutral, independent and impartial manner and will be guided by principles of objectivity and fairness giving consideration to, *inter alia*, the rights and obligations of the Relevant Parties, the general circumstances surrounding the Complaint and due respect for EBRD staff.

Scope

2. These Terms of Reference apply to any inquiry, action or review process undertaken as part of the Compliance Review, with a view to determining, as per PCM RP 36 if (and if so, how and why) any EBRD action, or failure to act, in respect of the Project has resulted in non-compliance with a relevant EBRD Policy, in this case Environmental and Social Policy 2008 and the Public Information Policy, and, if in the affirmative, to recommend remedial changes in accordance with PCM RP 40.

3. These Terms of Reference are limited to reviewing actions or inactions by the EBRD in relation to the relevant EBRD policy, and do not cover any actions or inactions by the Client, Georgia Urban Energy (GUE).

4. In conducting the Compliance Review, the Compliance Review Expert will examine any relevant documents and consult with the Relevant Parties. The Compliance Review Expert may also carry out a site visit, and employ such other methods as the Expert may deem appropriate, as per PCM RP 37.

5. Upon completion of the Compliance Review, the Compliance Review Expert will prepare a Compliance Review Report setting out his or her findings. The Compliance Review Report will include a summary of the facts and allegations in the Complaint, and the steps taken to conduct the Compliance Review, as per PCM RP 38.

6. Such processes shall be conducted in accordance with these Terms of Reference subject to modifications which the Compliance Review Expert and the PCM Officer may, at any time, expressly agree upon, except modification that may prejudice the interests of any Relevant Party or is inconsistent with accepted review practice.

7. The Compliance Review shall confine itself to the Compliance Review issues raised in

the present Complaint[51].It shall not go beyond the parameters of the Complaint to address other issues.

Time Frame

8. The Compliance Review will commence when the Eligibility Assessment Report containing these Terms of Reference is publicly released and posted on the PCM website.

9. Every effort shall be made to ensure that the Compliance Review is conducted as expeditiously as circumstances permit and it is intended that it shall be concluded within sixty (60) Business Days of its commencement, within which period a draft Compliance Review Report will be prepared and sent to the Bank's Management, pursuant to PCM RP 41. However, the PCM Officer may extend this time period for as long as is strictly necessary to ensure full and proper implementation of the Compliance Review. Any such extension shall be promptly notified to all Relevant Parties.

Procedure: Identification of Core Compliance Issues

10. As an initial step, the Compliance Review Expert will determine the precise requirements, in the specific context of the present Project, of each of the provisions of the ESP and of the Performance Requirements contained therein, and of the applicable provisions contained in the Public Information Policy in respect of which non-compliance is alleged in the Complaint. Such provisions notably include ESP PR 1(5, 9, 14-15), PR 3(8), PR 4(5 and 7), PR 5(7, 10 and 39), PR 6(2, 6 and 8), PR 10(17), PIP C(3).

11. The Compliance Review process will examine the core questions of compliance raised in the Complaint, including (but without limitation):

(i) *Regarding the assessment and mitigation of environmental and social risks in general – PR 1(5, 9, 14-15):*

a. Whether EBRD violated its 2008 Environmental and Social Policy by presenting this Project to the Board for approval when there were gaps in knowledge about potential Project risks and mitigation measures identified in the assessment package, even if the Client and Bank intended to address those information gaps subsequent to the ESIA and ESAP process and Board approval of the Project?

(ii) *Regarding ecological flow in the Paravani River - PR 1(5, 9, 14-15), PR 6(2, 6-8):*

a. Whether the approach to determining minimum flow as presented in the Project

[51] Request No. 2012/01, Paravani HPP. See Annex 1 to this report.

assessment process, including the ESAP, was consistent with the requirements of the ESP embodied in PR 1(5, 9, 14-15)?

b. Whether and how the global Convention on Biodiversity and European Commission 2000 Water Framework Directive, cited by the Complaint, is applicable under PR 6(2 and 6) and could influence Project requirements for in-stream flow;

(iii) *Regarding social impacts from the project – PR 4(5 and 7) and PR 5(7, 10 and 39)*:

a. Whether the potential for flooding in the village of Khertvisi was adequately addressed in the ESIA and ESAP under the requirements of PR 4; and if not, whether modeling studies to be conducted after the ESIA was submitted nonetheless satisfy this PR's mandate of adequately assessing risks and potential impacts to the community and sufficiently addressing those risks so as to favour prevention or avoidance of risks and impacts over minimisation and reduction.

b. Whether restrictions on local individuals' access to pasture lands were properly identified, evaluated and, if necessary, mitigated under PR 5(7, 10 and 39).

(iv) *Regarding bird mortality from the transmission line – PR 6(6-8)*:

a. Whether the issue of bird mortality was adequately addressed in the ESIA and the ESAP with respect to ensuring adequate assessment and mitigation of impacts to birds consistent with the PR's "precautionary approach"; and if not, whether additional studies to be conducted after the ESIA and ESAP nonetheless satisfy the requirements of PR 6.

(v) *Regarding alternate renewable sources - the scope of the alternatives analysis presented in the ESIA – PR 1(9)*:

a. Whether the analysis of the Paravani Project and other hydropower projects was sufficient under PR 1(9), or whether other renewable energy alternatives to the proposed Project should have been considered and described in the ESIA to comply with the ESP.

(vi) *Regarding the availability of Project documents in English – PR 1; PR 10 and PIP C(3)*

a. Whether the documentation during the assessment process satisfied the requirements of PR 10 of the ESP regarding meaningful third-party consultation and engagement, where the full ESIAs were in Georgian and not available in English;

b. Whether the available English-language documentation during the assessment process satisfied the requirements of the PIP (C)3 regarding the Bank's commitment to open communication and willingness to listen to third parties, absent an English version of the full ESIAs;

c. Whether, given that the ESIAs were not in English, EBRD took reasonable steps through discussions, meetings with the Client and its consultant, and review of the NTS, SEP and ESAP, to assure itself that the ESIAs correctly assessed the environmental and social impacts at an appropriate level of detail, as required by the ESP, and that the

proposed mitigation measures were adequate to ensure compliance with the requirements of PR 1.

12. Any elements identified that are beyond the scope of these Terms of Reference will be excluded.

Procedure: Conduct of the Review

13. The Compliance Review Expert may conduct the Compliance Review process in such a manner as he or she considers appropriate, taking into account the Rules of Procedure of the PCM, the concerns expressed by the Complainant as set out in the Complaint, and the general circumstances of the Complaint. Specifically, the Compliance Review Expert may:

i. review the Complaint to identify the compliance issues to be included in the Compliance Review, specifically whether EBRD complied with its Environment and Social Policy 2008; and the Public Information Policy.

ii. review all documentation, including internal memos and e-mail exchanges relevant to the Complaint;

iii. consult with EBRD staff involved in the Project including personnel from the Bank's Environment and Sustainability Department, the Project Team Group, and the relevant EBRD Resident Office;

iv. solicit additional oral or written information from, or hold meetings with, the Complainant and any Relevant Party;

v. conduct a visit to the Project site to ascertain disputed facts accompanied by such officials of the Bank, the Complainant or his representatives, or the Client, or other persons, as he or she may consider necessary and appropriate;

vi. request the PCM Officer to retain additional expertise if needed;

vii. identify any appropriate remedial changes in accordance with PCM, RP 40, subject to consideration of any restrictions or arrangements already committed to by the Bank or any other Relevant Party in existing Project related agreements;

viii. take any other action as may be required to complete the Compliance Review within the required time-frame.

Procedure: General

14. The Compliance Review Expert shall enjoy, subject to the provision of reasonable notice, full and unrestricted access to relevant Bank staff and files, and Bank Staff shall be required to cooperate fully with the Compliance Review Expert in carrying out the Compliance Review.

15. Access to, and use and disclosure of, any information gathered by the Compliance Review Expert during the Compliance Review process shall be subject to the Bank's Public Information Policy and any other applicable requirements to maintain sensitive commercial information confidential. The Compliance Review Expert may not release a document, or information based thereon, which has been provided on a confidential basis without the express written consent of the party who has provided such document.

16. The Compliance Review Expert shall take care to minimise the disruption to the daily operations of all involved parties, including relevant Bank staff.

17. Generally, all Relevant Parties shall cooperate in good faith with the Compliance Review Expert to advance the Compliance Review as expeditiously as possible and, in particular, shall endeavour to comply with requests from the Compliance Review Expert obtaining access to sites, submission of written materials, provision of information and attendance at meetings.

Compliance Review Report

18. In accordance with PCM, RP 38, the Compliance Review Report shall include a summary of the facts and allegations in the Complaint, and the steps taken to conduct the Compliance Review.

19. The Compliance Review Report shall include a summary of findings as to whether there have been violations of the Environmental and Social Policy and/or the Public Information Policy and recommendations as to what actions should be taken, and by whom, to correct the violations and to prevent future violations.

20. The recommendations and findings of the Compliance Review Report shall be based only on the facts relevant to the present Complaint and shall be strictly impartial.

21. Monitoring. If considered necessary following the Compliance Review arrangements for monitoring and implementation of any recommended changes pursuant to PCM RP 40b shall be included in the Review recommendations

22. Prior to submitting the Compliance Review Report to the Relevant Parties and to the Board in accordance with PCM RP 39, or sending the draft Compliance Review Report to the Bank's Management, in accordance with PCM RP 41, the Compliance Review Expert shall ensure that all factual information relating to the Relevant Parties is verified with them.

Exclusion of Liability

23. Without prejudice to the privileges and immunities enjoyed by PCM Experts, the Compliance Review Expert shall not be liable to any party for any act or omission in connection with any Compliance Review activities undertaken pursuant to these Terms of Reference.

Annex 1: Complaint

To:
Ms. Anoush Begoyan
PCM Officer
Project Complaint Mechanism
European Bank for Reconstruction and Development
One Exchange Square
London EC2A2JN
United Kingdom
Fax: +44 20 7338 7633
Email: pcm@ebrd.com

From: Green Alternative, Georgia

Subject: Complaint on Paravani Hydro Power Plant Project (Georgia)
seeking project compliance review

22 December, 2011

Dear Ms. Begoyan,

We would like to submit a complaint on the 87 MW Paravani Hydro Power Plant Project due to the inadequate appraisal of the environmental and social risks, as well as inadequate mitigation measures developed in the final version of the project's Environmental and Social Impact Assessment (ESIA) and Environmental and Social Action Plan (ESAP). The project is financed not only by EBRD but International Financial Corporation also approved the project.

The project assumes construction of a 14 km derivation tunnel in order to divert water from the Paravani river to the Mtkvari river upstream of the village of Khertvisi and construction of 220 k transmission lines to connect with the grid. We strongly believe that the project has drastic negative impacts on biodiversity of the river Paravani, while the related 220 k transmission lines infrastructure would increase bird mortality. In addition, the project creates a significant risk of flooding Khertvisi village.

We therefore ask the Project Complaint Mechanism to undertake a compliance review of the project and to verify a) whether the project ESIA correctly assesses environmental and social risks and b) whether the proposed mitigation measures effectively prevent possible environmental and social damage by the Paravani HPP project.

In addition, we would like to ask the Project Complaint Mechanism to examine a number of issues related to access to documentation and Public Information Policy implementation.

We would like to emphasize that dialogue regarding the project has been undertaken both with the EBRD, as well as with the project sponsors, to ensure that our concerns are dealt with. A list of the most

relevant communications can be found attached. However, this dialogue has not provided us with adequate assurances that the project is compliant with the EBRD's Environmental and Social Policy.

Environmental Impacts

Impacts on ecosystem of the river

In order to produce electricity, the project plans to divert 90% of the annual average flow (AAF) in the Paravani River to the Mtkvari River. According to the ESIA **10%** of AAF of the river as a minimum sanitary flow will be left to preserve the ecosystem of the river Paravani. According to the document 10% is based on "western standards" (without referring any guidelines), and the impact of this on the ecosystem of the Paravani River is **assessed as minimal**.

On May 16 2011, the project sponsors and consultants arranged a roundtable about the Paravani HPP and clarified that they calculated the sanitary flow based on the Tennant (Montana) method widely spread in 16 states of the USA. Recently, the EBRD confirmed the statement by the Project consultants "according to the flow method actually applied (Tennant Method) is one of the most widely accepted globally, having been adopted by 25+ countries including the USA (in 16 States), Canada, Australia, Italy, and Turkey."

The Tennant method was introduced in 1975. Donald Tennant created a table that allows professional staff working in a regulatory environment to set the required instream flow by using the percent of the average annual flow (AAF) without further onsite data collection. It is a simple "rule-of-thumb" method setting the correlation between minimum water discharge and fish habitats, wildlife and recreation.

Table: Instream flow for fish, wildlife, and recreation (Tennant 1975)[1]

Narrative description of Flows	Recommended Base Flow Regimes.	
	October - March	April – September
Flushing or Maximum	200% of the average flow	
Optimum Range	60 – 100% of the average flow	
Outstanding	40%	60%
Excellent	30%	50%
Good	20%	40%
Fair or degrading	**10%**	**30%**
Poor or minimum	10%	10%
Severe degradation	10% of average flow to zero flow	

There are two issues here. The first, as we see, is that the target level of sanitary water flow chosen is 'fair or degrading', which is likely to be insufficient to guarantee the maintenance of the biodiversity of the river. The second problem is the Tennant method itself.

[1] http://warnercnr.colostate.edu/~srf/students/thesis/CSU_FRWS_MS_thesis_S2006-Jennifer_Mann.pdf

According to the Journal of Environmental Studies[2] "*In this regional method [Tennant] according to the observed data a flow equal to* ***30 percent of average*** *annual discharge is necessary to maintain proper width, depth and velocity in streams. Tenant did not mention the necessary criteria to derive the critical discharges, so morphological resemblance is the key for its transferability to other rivers. Another important point in using the Tenant method is the fact that this method does not consider daily, monthly and annual discharge variation directly.* ***Primarily, using the base values in the Tenant method means to reduce a fixed value from all of the flows regardless of low or high flow conditions, which could impose severe losses to the river environment during low flow period****."*

The same approach is highly supported also by a thesis on instream flow methodologies evaluating the Tennant method[3], which recommends that "the method be applied with caution or modified to better represent local conditions based on further research". Moreover, it recommends that the "Tennant method be used only for **initial planning flow recommendations without serious validation within the region of use.** The Tennant method does provide a general idea of the amount of water (..) needed to sustain a desired level of fish habitat and shows a clear progression of the needs of the fish for the quality of habitat that is desired."[4]

In addition according to a report[5] regarding establishing environmental flow requirements for Millhaven Creek (Southern Ontario) "Determining a single, minimum, threshold flow, to the exclusion of other ecologically relevant flows, is no longer an accepted approach to instream flow management. It is known that the minimum flow determined for one life stage of one species does not ensure adequate habitat protection, even for the species for which the threshold flow was established (e.g. Calow and Petts, 1992, 1994). A single flow value cannot simultaneously meet the requirements of all species in an aquatic community; variable conditions can allow different species to flourish at different times."[6]

Taking the above-mentioned research into account, using the Tennant method as a main tool for determining minimal instream flow in the Paravani River where even the hydrological data is outdated (1937-1986[7]) will not only have a negative impact on the ecosystem of the river (**Fair or degrading**[8]) but also it is not compliant with the EBRD's PR1[9] (5) "… The appraisal process will be based on recent

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[2] Journal of Environmental Studies, Vol. 37, No. 58, September, 2011; "Determining the Minimum Ecological Water Requirements in Perennial Rives Using Morphological Parameters" (November 2010) Shokoohi, A. R. and Hong Y; See: http://hydro.ou.edu/Publications/PDFs/2011/83.Shokoohi_J_Environ_2011.pdf

[3]"Evaluation study of the Tennant method for higher gradient streams in the national forest system lands in the western U.S." 6.1 Recommendations; page 88; See: http://warnercnr.colostate.edu/~srf/students/thesis/CSU_FRWS_MS_thesis_S2006-Jennifer_Mann.pdf

[4] "Evaluation study of Tenant method for higher gradient streams in the national forest system lands in the western U.S." 6.1 Recommendations; page 88; See: http://warnercnr.colostate.edu/~srf/students/thesis/CSU_FRWS_MS_thesis_S2006-Jennifer_Mann.pdf

[5]This report was produced as part of an overall pilot project on establishing environment flow requirements in Southern Ontario and has received funding support from the Ontario Ministry of the Environment;

[6] Conservation Ontario "Establishing Environmental Flow requirements for Millhaven Creek" pg. 36;

[7] ESIA of the Paravani HPP project

[8] Table: Instream flow for fish, wildlife, and recreation (Tennant 1975);

[9] Environmental and Social Policy of EBRD; PR1 (5) "Through appraisal activities such as risk assessment, auditing, or environmental and social impact assessment, the client will consider in an integrated manner the potential environmental and social issues and impacts associated with the proposed project. The information gained will inform the EBRD's own due diligence related to the client and project and will help to identify the applicable PRs

information, including an accurate description and delineation of the client's business or the project, and social and environmental baseline data at an appropriate level of detail" and PR6[10] which states that "the Bank is guided by and supports the implementation of applicable international law and conventions and relevant EU directives" and "In planning and implementing impact assessments where biodiversity issues are a key focus, clients should refer to best-practice guidelines on integrating biodiversity into impact assessment." From the ESIA there is no evidence that this has been done.

In addition the EBRD's PR3 (8) directly states "When host country regulations differ from the levels and measures presented in EU environmental requirements or requirements agreed pursuant to paragraph 7[11], projects will be expected to meet whichever is more stringent."

The most fundamental piece of water legislation existing today aiming to restore the biodiversity and functioning of all surface freshwater bodies, including lakes, streams, rivers, groundwater etc., is the Water Framework Directive (European Commission, 2000)[12] that was not even mentioned in the ESIA at all, as well as the Convention on Biological Diversity[13]. In 2001 the Convention's Subsidiary Body on Scientific, Technical and Technological Advice recommended that environmental flow assessments should be conducted for dams to ensure downstream releases for maintaining ecosystem integrity and community livelihoods[14].

The Water Framework Directive also requires Member States to achieve at least Good Ecological Status (GES) in all water bodies by 2015 and also to prevent deterioration in the status of any water body, with High Ecological Status (HES) as a target for pristine sites. Exceptions are permitted only for water bodies designated as Heavily Modified (HMWB), where the target is Good Ecological Potential (GEP).

According to the Guidance on Environmental Flow Releases from Impoundments to implement the Water Framework Directive[15] "Setting and implementing environmental flow releases from impoundments involves many different aspects of management, including policy level objective setting, technical definition of flow needs for ecosystem support and financial considerations of the costs of mitigation measures". Moreover, "This provides a risk-based approach (Faulkner et al., 2002) in which

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and the appropriate measures to better manage risk and develop opportunities, in accordance with the applicable PRs. The appraisal process will be based on recent information, including an accurate description and delineation of the client's business or the project, and social and environmental baseline data at an appropriate level of detail".

[10] EBRD's Environmental and Social Policy (2008): "In planning and implementing impact assessments where biodiversity issues are a key focus, clients should refer to best practice guidelines on integrating biodiversity into impact assessments";

[11] EBRD's Environmental and Social Policy (2008); PR3: 7. Where EU environmental requirements do not exist, the client will apply other good international practice such as the World Bank Group Environmental Health and Safety Guidelines. In such cases the Bank will agree the applicable requirements with the client on a project by project basis.

[12] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2000:327:0001:0072:EN:PDF

[13] This convention is in the list of international conventions chapter of ESIA, but during assessment of environmental impacts ESIA does not refer to any guideline stating that 10% of flow will be enough for ecosystem integrity and community livelihoods;

[14] International Rivers: "Protecting Rivers and Rights", The World Commission on Dams Recommendations in Action; Page 15; July, 2010;

[15] Sniffer (Scotland and Northern Ireland Forum For Environmental Research): Guidance on Environmental Flow Releases from Impoundments to Implement the Water Framework Directive; Final report, May 2007;

greater investment in the assessment yields lower uncertainty in results. In all three approaches (Desk-top flow, Hydraulic and Biological Assessments), assessments should be carried out by a team of experts that normally includes physical scientists, such as a hydrologist, hydrogeologist and geomorphologist, and biological scientists, such as an macro-invertebrate ecologist, freshwater botanist and a fish biologist."

Impacts on birds

One of the components of the project is 220KV transmission lines. The project is located directly on the African-Eurasian migratory waterbird flyway[16] for 255 bird species[17] crossing the territory of Georgia from their nesting sites to the wintering areas and back. These species are sensitive to accidents on linear obstacles (E.g. wires) and to electrocution while perching.

According to the response of the EBRD management team based on the concern raised, "IFC and EBRD will request "Georgian Urban Energy" to re-evaluate the transmission tower design, conductor separation and possible use of bird diverters in order to minimize the risk of bird mortality." Despite the response of the EBRD, a re-evaluation report has never been disclosed to the public, while the construction works on the Project have already been started thus violating PR6 of the Bank's Environmental and Social Policy[18] "Through the environmental and appraisal process, the client will identify and characterise the potential impacts on biodiversity likely to be caused by the project. The extent of due diligence should be sufficient to fully characterise the risks and impacts, consistent with a precautionary approach and reflecting the concerns of relevant stakeholders."

Social Impacts

One of the major social impacts of the project is the risk of flooding the village of Khertvisi located downstream of the powerhouse of the project. According to the project description, 90% of the average river flow in Paravani will be diverted to the river Mtkvari, which will increase water flow in Mtkvari significantly (Increasing the flow by 17 cubic metres/second on average, in Spring by 35 cubic metres/second).

The project sponsors assure us that "the maximum volume of water diverted from the Paravani River into the Mtkvari River would raise the high water level around 10 cm in an average year, which should not result in flooding."[19] However, this cannot be considered as a reliable argument because increasing the river level on average by 10 cm per year does not exclude the possibility of flooding the village during spring months when the river flow reaches its maximum level.

According to locals, almost every spring, the river Mtkvari already floods the village, especially those land plots and houses located along the river, because of the lack of bank protection on the river. People

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[16] http://www.cms.int/species/aewa/aew_bkrd.htm

[17] http://www.birdlife.org/flyways/africa_eurasia/index.html Over 40% of long-distance migrants in the African-Eurasian flyway have shown signs of decline over the last three decades. Of these 10% are classified by BirdLife as Globally Threatened or Near Threatened on the IUCN Red List. Many of these birds are continuing to disappear.

[18] EBRD's Environmental and Social Policy, PR6 (Para. 6);

[19] Response letter of the management team of the EBRD;

fear that if bank protection measures are not implemented it will be impossible to live in the village after the project implementation.

According to the EBRD's response, "given the level of community concern, Georgian Urban Energy has agreed to commission an additional evaluation of flooding risks and this evaluation is currently underway. The outcome of this study – including the technical details of any mitigation requirement(s) - will be discussed with the potentially affected community as soon as it becomes available."

The construction works on Paravani HPP have already started, but additional studies of evaluation flooding risks have been disclosed neither for locals nor for civil society thus violating PR 4: "7. The client will identify and evaluate the risks and potential impacts to the health and safety of the affected community during the design, construction, operation, and decommissioning of the project and will establish preventive measures and plans to address them in a manner commensurate with the identified risks and impacts. These measures will favour the prevention or avoidance of risks and impacts over minimisation and reduction."

Apart from the flooding, the ESIA fails to describe also problems regarding the access to pastures and subsequent mitigation measures. According to the local population, since construction works started, they have not been allowed to graze their cattle in their pastures ("Kvarsa") as the path to the pastures has been closed by the project sponsor.

Alternative renewable sources

The ESIA of the project describes technical and technological alternatives of the project, a zero alternative and alternative sources of the energy generation like solar, wind, geothermal and bio energy alternatives to the central option. However, one it does not properly analyse alternative sources of energy generation, instead giving only background descriptions of these renewable alternatives without making a detailed comparative analysis with the central option. It does not include either financial calculations -- how much will be needed for implementing such projects - or costs of these renewable energy projects.

According to the response of the EBRD, "A project-specific ESIA is not considered the appropriate forum to evaluate the national policy-level question of whether Georgia should develop medium-large hydropower projects versus other forms of renewable energy (for example, mini-hydro, wind, biomass)." This response contradicts the Environmental and Social Policy of the EBRD[20]: The ESIA of the project should include "an examination of technically and financially feasible alternatives to the source of such impacts, and documentation of the rationale for selecting the particular course of action proposed", and also begs the question: if development of other renewable sources as an alternative to the central option is not subject to the ESIA, then why are they described in the ESIA as alternatives to the central option?

Project-related documentation

The project ESIA document was not available in English. This is worrying for two reasons: First it is unclear how the EBRD and IFC made a quality assessment of the Georgian ESIA of the project and second, a basic principle of the Public Information Policy of the EBRD is willingness to listen to third

[20] PR 1(9) of Environmental and Social Policy of EBRD (2008);

parties (including international NGOs) so as to benefit from their contributions to its work. The EBRD's PR 10 directly commits "to identify people or communities that are or could be affected by the project, as well as other interested parties." It is unclear how international experts can give their input if the ESIA is only in Georgian.

According to the EBRD "There was no quality review of Sponsor documentation other than to ensure that the final Action Plan will satisfy any outstanding Lender requirements. Scientific Research Firm Gamma, a reputable and independent Georgian consultancy with whom the Lenders have worked previously, prepared the ESIAs and other materials according to Terms of Reference provided by the Lenders. The scientific credentials of Gamma's experts are among the best in Georgia". This suggests that the appraisal of an ESIA for the management team of EBRD is just a formality and purely depends on hired consultants. However, the content of the Action Plan depends on what is in the ESIA, so it makes little sense to assess one and not the other. Another question that needs to be raised is on which criteria the Bank assessed the scientific credentials of Gamma's experts to be among the best in Georgia.

Desired Outcomes

With this complaint, we expect the EBRD Project Compliance Mechanism Experts to perform a Compliance Review of the Paravani HPP project, namely to check whether the ESIA documentation complies with the Performance Requirements and general commitments of the EBRD's Environmental and Social Policy.

At the same time, we expect that EBRD will change its approach towards the Tenant methodology, initiate multi-season, multi-year monitoring across the Paravani river in order to gather appropriate field data (Fish, flow, climate, geomorphology, sediment movement, etc.) in order to facilitate a comparable methodology and use existing desktop method models to create a Paravani-based method, which can be used only in the Paravani river and will ensure minimal impact on ecosystem of the river and thus compliance with Convention on Biological Diversity and Water Framework Directive will be ensured.

In addition, it is necessary to disclose the reassessment report of the flooding risk for Khertvisi village and re-evaluation report of the impact of transmission lines on birds and organize public hearing meetings on these documents.

We also expect that in order to fulfill the basic principles of the Public Information Policy and Environmental and Social Policy (PR10) of EBRD, the Bank will ensure the availability of the ESIA of the project in English.

Best regards,

David Chipashvili

International Financial Institutions
Monitoring Programs Coordinator

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Annex 1 "Email communication with EBRD, IFC, Georgian Urban Energy and Consultants"

1. Email to Mr. Laurent Chabrier and Mr. Onur Tosunoglu asking progress reports of the project, final Environmental and Social Impact Assessment and dates of public hearing meetings. **24 December, 2010;**
2. Response email of Mr. Chabrier; **4 January, 2011**;
3. Email to Mr. Laurent Chabrier and Mr. Onur Tosunoglu regarding Paravani. **30 January, 2011;**
4. Response email of Mr. Chabrier; **31 january, 2011;**
5. Email to Mr. Laurent Chabrier, Mr. Onur Tosunoglu and Mr. David Managadze asking to fix technical problem regarding downloading full ESIA from the website; **7 April, 2011;**
6. Response Email of Mr. Chabrier; **7 April, 2011;**
7. Email to Mr. Chabrier asking dates of Public consultations; **April 18, 2011**;
8. Response of Mr. Chabrier; **19 April, 2011;**
9. Email to Mr Chabrier regarding English version of ESIA; **19 April, 2011**
10. Response Email of Ms. Elizabeth Smith, Senior Stakeholder Engagement Advisor; **20 April, 2011**
11. Email to Mr. Dariusz Prasek asking clarification questions regarding the project; **22 May, 2011;**
12. Joint response from Mr. Dariusz Prasek on our questions, **3 June, 2011**;

Annex 2 "Letters to Executive Directors of EBRD and IFC"

1. Letter to Executive Directors of EBRD regarding the Paravani HPP; 14 June, 2011;
   See: http://www.greenalt.org/webmill/data/file/Letter_To_EDsEBRD.pdf

2. Letter to Executive Directors of World Bank regarding the Paravani HPP; 14 June, 2011;
   See: http://www.greenalt.org/webmill/data/file/Letter_To_EDsWB.pdf

Annex 3 "Meetings during EBRD AGM in Astana and in Tbilisi over the Paravani HPP"

1. Meeting with project consultants and Urban Energy on Paravani; 17 May, 2011;
2. Issue Paper on Paravani HPP, for EBRD AGM, Astana; See: http://www.greenalt.org/webmill/data/file/Paravani_Hydro_Power_Plant_Georgia.pdf
3. Four presentations on problematic issues of Paravani HPP for the EBRD staff, Management Team, Executive Directors and President of the EBRD; EBRD AGM, Astana 2011;

Annex 4: "Attachment of the Management team's response of EBRD and email communication"

Annex 2: Bank's Management Response to the Complaint

DOCUMENT OF THE EUROPEAN BANK FOR RECONSTUCTION AND DEVELOPMENT

Project	38940 Paravani HPP 42249 Paravani HPP Equity
Project Team	Operation Leader: 38940: Laurent Chabrier 42249: Philip Lam OGC: Stephanie Wormser ESD: Jack Mozingo, Frederic Giovannetti, Mikko Venermo
Date of issue to ExCom	20 January 2012
Date of approval by ExCom	25 January 2012
To: PCM Officer	Anoush Begoyan
From: Director, ESD Director, PEU	 Alistair Clark Nandita Parshad
Date of issue to PCM Officer	25 January 2012

Thank you for your letter dated the 22nd December 2011, requesting a compliance review of the Paravani Hydropower Project under the EBRD Projects Complaint Mechanism (PCM) by Green Alternative. This complaint was officially registered on 4th January 2012 and this document is the 'Bank Response' to the Complaint as outlined in *PCM: Rules of Procedure* (Clause 15), which is due by Tuesday 31 January to the PCM Officer.

The letter of Complaint raises a number of points regarding compliance with the EBRD's 2008 *Environmental and Social Policy*. Section 1 of this "Bank Response" describes the complex hydropower project and its setting and the remainder describes how the project is structured to minimise the impact of the Paravani HPP on potentially sensitive ecosystems and to comply with Georgian law and EBRD Policy and Performance Requirements.

The complaint from Green Alternative asks for a review of two elements:

- "… a compliance review of the project … to verify a) whether the project ESIA correctly assesses environmental and social risks and b) whether the proposed mitigation measures effectively prevent possible environmental and social damage by the Paravani HPP project." Specifically, the complaint raises four specific issues regarding the adequacy of the evaluation of environmental and social impacts, each of which is addressed in section 2 below.
- "… to examine a number of issues related to access to documentation and Public Information Policy implementation." Here, the complaint raised a single issue, the response to which is in section 3 below.

1. The Paravani Hydropower Project

The project involves construction and operation of an 86MW hydropower plant (HPP) on the Paravani River in Georgia by Georgian Urban Energy (GUE). The Project is categorised as "A", with potentially significant adverse environmental and/or social impacts. Construction

of the Project will involve environmentally sensitive activities such as tunnelling and rock management, access road improvement and construction, weir construction in a mountain stream, construction and use of explosives magazine, establishment and use of construction camps, and construction of a 220kV transmission line that will run 32km from the powerhouse to a substation near Akhaltsikhe.

As part of the Bank's environmental and social due diligence, a local consultant prepared two Environmental Impact Assessments (EIAs) under Georgian law, one for the hydropower plant (2009) and one for the transmission line (2010). The impact assessments were completed under TORs prepared by the EBRD, and included biological and archaeological surveys.

The primary potential impacts of the HPP include reduced streamflow in the Paravani River between the intake and the confluence with the Mktvari River (up to 90 percent reduction of annual average flows) and associated effects on aquatic habitat and biodiversity. The dam will include a fish pass to allow free movement upstream and downstream. The primary potential impact from the transmission line include effects on birds, particularly large birds that migrate through the region. In addition, concerns were raised during public consultation about increased flooding in the Mktvari River in and near Khertvisi village. Some land will be needed for tower foundations and access to the transmission line corridor, and acquistion will be guided by a Land Acquisition and Compensation Plan. To avoid any impact on cultural heritage, part of the transmission line was re-routed so it would not be visible from Khertvisi Castle.

Each of the ESIAs was disclosed for public review under Georgian law, in 2009 for the hydropower project (weir, tunnel, and plant) and 2010 for the trnasmission line. To meet the requirements of the Bank's policies, the ESIA package for the entire project – the two EIAs, a combined NonTechnical Summary of both EIAs, an expanded and updated Stakeholder Engagement Plan, and an Environmental and Social Action Plan – was disclosed in 2011 for a 60-day period and further public consultations were held in accordance with the Stakeholder Engagement Plan. Information about disclosure of the ESIA package is available at *http://www.ebrd.com/english/ pages/project/eia/ 38940.shtml*. The project was approved by the Board of Directors in June 2011.

2. Environmental and Social Impacts

Impacts on ecosystem of the river. This complaint focuses on the ESIA's use of the so-called Tennant Method for as the method for calculating the amount of water that could be diverted from the river and used for hydropower, and thus how much water needed to remain in the river to maintain habitat and biodiversity. In summary, the Tennant Method specifies that approximately 10 percent of the average annual flow be maintained as the minimum flow; in practice, because of the variation in flow rates over the year, an average of over 20 percent of flow was predicted to remain in the river.

Response. The complaint includes a wide review of commentary on the Tennant Method and cites other projects that used other methods or variations of Tennant. Notwithstanding all the various interpretations and known shortcomings, it remains one of the most widely applied methods globally, having been adopted by more than 25 countries including Canada,

Australia, Italy, Turkey, and the United States (in 16 states),. There are good reasons for this widespread adoption, which may also be found in the commentary.

The application of Tennant to seasonally variable mountain streams in Georgia means, in effect, that 15-25 percent of normal flow will be released for more than 80 percent of the year, including the most sensitive (drier) periods. Thus, the statement regarding 10 percent of normal flow is misleading; in the case of Paravani, the use of the Tennant methodology would mean that over 20 percent of average annual flow would be released over the year, ranging from 10 percent of monthly average flow in March up to 45 percent in May. It is also important to note that flow rates increase downstream of the project site due to inflows, which would mean a much higher percentage of average flow would be available downstream of the intake.

For purposes of the Paravani project, the key citation and quotation provided in the complaint is from the thesis prepared by Jennifer Mann at Colorado State University in 2006: She recommends that the "Tennant method be used only for initial planning flow recommendations without serious validation within the region of use. The Tennant method does provide a general idea of the amount of water (..) needed to sustain a desired level of fish habitat and shows a clear progression of the needs of the fish for the quality of habitat that is desired." The sentences that follow this quotation, which were not cited by the complaint, are also important. The first reads "This function of the Tennant method [providing a general idea of the amount of water] is not diminished by the evidence provided in this study." The second sentence states that any use of the Tennant Method alone, outside the Tennant study area and validation parameters, "…should be treated as potentially suspect without further validation."

The Bank agrees with these conclusions, which are more or less widely accepted, and structured the Environmental and Social Action Plan accordingly. Items 6.1, 6.2, and 6.3 of the ESAP require implementation of monitoring programs for flow, habitat, and aqua*tic biodiversity, and item 6.4 specifies that if there is any significant decline in downstream fish populations or decreases in ecosystem health, GUE is required to "…develop – via an adaptive management approach – potential mitigation and offset measures, including any needed changes in project operations." This is specifically intended to ensure that diversions and flow rates can and will be modified if needed to protect downstream biodiversity and habitat from adverse impacts due to the hydropower project. Thus, the ESAP is specifically intended to, in the complaint's words, "…create a Paravani-based method… that will ensure minimal impact on ecosystem of the river…."

The Bank acknowledges that the uncertainty in flow rates, and the key mitigation measures in the ESAP, were not described in the ESIA and the NonTechnical Summary and regrets any confusion this may have caused.

Impacts on birds. The complaint notes that the Bank's response to an earlier letter, prior to the Board decision to finance the project, that we would request further evaluation of the transmission line's potential impacts on birds. Further, the complaint states that project construction has begun, thus, it is claimed, violating PR6.

Response. The ESIA and NonTechnical Summary (NTS) evaluated the potential impacts of the transmission line on birds and concluded they would be minor and localized since (a) the line is much lower than typical heights at which large birds migrate through this region and (b) lines will be spaced far enough apart to avoid electrocution hazard. In addition, the ESAP requires that, following construction, bird mortality be monitored during migration seasons for at least two years to determine if further protection measures are needed.

Even so, the Bank requested, and GUE agreed, to conduct further desktop and field studies to determine the need for further protection measures. The studies have not begun but will be planned before the spring migration this year. Studies will be completed, and decisions made, before construction begins. Although construction of some project components has begun, this is not the case for the transmission line, which is not expected to begin until late 2012 or 2013. It is the Bank's understanding that GUE will monitor along the corridor during the 2012 spring and fall migration seasons and then determine whether bird diverters or other protection measures are needed. Although no formal consultation is planned, the Bank has requested that GUE share the results of monitoring and decisions on bird protection measures with the complainant and other interested stakeholders when they are available later in 2012.

Social impacts. As with birds, the complaint notes that the Bank's response to an earlier letter, prior to the Board decision to finance the project, has promised further action that has not been taken to date. Specifically, the Bank stated that GUE would perform further evaluation of the potential for the project to cause additional flooding on the Mktvari River and discuss the results with the community. (Note: the issue is that water that currently flows down the Paravani River to its confluence with the Mktvari River will be diverted through a tunnel to a powerhouse upstream of the confluence, and water will enter the Mktvari 1.5km upstream of the confluence with the Paravani. The concern is that this additional water will raise the level of floodwaters and cause flooding in and near Khertvisi.) In addition, the complaint relayed concerns of some people that "…they have not been allowed to graze their cattle in their pastures…."

Response. As noted in the Bank's response to earlier letters, any rise in water levels is expected to be relatively small. The ESIA and NTS specified that GUE would observe water levels and develop appropriate methods of impact avoidance in case of negative impacts. As a result of the expressed concerns, GUE committed to conducting modeling studies so that impacts could be predicted with more accuracy.

At the present time, GUE is completing its detailed design of monitoring required to complete this flooding study, which will examine the extent to which water levels may be raised during various flood events, and the extent to which land on either side of the Mktvari River between the powerhouse and the confluence with the Paravani River may be subjected to further flooding as a result. The results in turn will be used to design any needed mitigation. As noted in the ESIA and NTS, the results of the study will be presented to the local community, and GUE will work with authorities and affected people to develop mitigation and/or compensation measures.

Regarding the limitation on grazing of some pastures, we understand that there have been some such restrictions, due at least in part to safety concerns. In accordance with EBRD Performance Requirement 5, GUE is being required to provide replacement or replacement

value for any economic displacement caused by the project and the Bank will monitor this issue carefully. In addition, we note these restrictions and the adequacy of mitigation measures are subject to monitoring by the Bank, which is currently planned for 2012.

Alternative renewable sources. The complaint is that the analysis of alternative renewable sources of energy is inadequate in that it describes the alternative technologies but does not make a detailed analysis of them, including a financial analysis. Further, it is noted that the Bank's response to an earlier letter stated that a project-specific ESIA is not the proper place to evaluate policy-level questions at the national level. This failure to analyze the alternatives in detail is alleged to be violation of the Bank's Performance Requirement 1.9.

Response. As noted in the responses to previous communications, the Georgia Ministry of Energy, with input from the World Bank Group and other agencies, has prioritized the development of hydropower resources in general. The Strategic Environmental Assessment commissioned by the IBRD for Georgia's power sector (dated December 2007 and commented upon by Green Alternative) included a least-cost analysis of various power sector scenarios in Georgia and concluded that the Paravani Project would be the most cost-effective of the hydropower projects and should be developed first. The report also noted that the project's environmental and social impacts were minimal compared to other medium-large hydropower projects, as there is no need for physical displacement, minimal economic displacement, no protected areas or endangered species impacted, no 'storage' (reservoir) required and no villages located in the project infrastructure boundary. It is important to note that the ESIAs for the Paravani HPP verified each of these findings with regard to this project.

While wind, solar, and other technologies are theoretical options, they are not considered technically and/or economically feasible and so are not evaluated in detail; thus, the lack of an in-depth analysis does not contradict of the Bank's Performance Requirement to "…include an examination of technically and financially feasible alternatives…." The ESIA's mention of the other renewable technologies was not intended to introduce a full-scale evaluation of them, but rather to indicate that hydropower was not being developed in a vacuum, but rather that some alternatives did exist and had been considered by others in the process of deciding upon the Paravani project.

3. Project-related documentation

Lack of English-language documentation and project QA. The complaint suggests that all ESIAs should be in English so they can be reviewed by international experts supporting local CSOs, and alleges deficiencies in the Bank's appraisal of the ESIA and over-reliance on consultants.

Response. EBRD's 2008 Environmental and Social Policy requires that ESIA documentation be available in the relevant language for the project location for the purposes of public consultation. This project is located in Georgia and thus the full ESIA documentation was disclosed in the Georgian language. To assist other interested parties who do not speak Georgian understand the project, the Non-Technical Summary, Stakeholder Engagement Plan, and Environmental and Social Action Plan documents were disclosed in English. The requirements of the Public Information Policy and the Environmental and Social Policy focus on the meaningful engagement of, in particular, affected stakeholders. There is currently no

requirement to translate all documentation into English. Further, we note that translation of large semi-technical documents such as ESIAs have significant costs, and it was not considered reasonable to request the Client to translate the full documentation for the one request received from a foreign CSO.

While the Bank did not review the Georgian-language ESIA directly, it is important to note that this is not the only way in which we conducted our due diligence and evaluated the project. EBRD's review of this project included hundreds of hours spent on site visits by environmental and social experts; repeated meetings with project Sponsors, Government agencies and affected community members; in-depth planning and technical discussions on a wide range of issues with Sponsors, ESIA consultants and EBRD's and IFC's in-house experts; and review of environmental and social documentation. Lender environmental specialists relied on the outcomes of this process over the course of more than a year to be confident that the ESIA documentation and commitments, including those in the ESAP, were sufficient to ensure the project is structured to meet the Bank's PRs. We note that a significant amount of information beyond the Non-Technical Summary was available in English for IFI staff during due diligence, albeit in rough working draft language. Because the focus of consultation was on Georgian stakeholders, it was not considered necessary to have the client commission a polished translation of the documents into English, which would have taken a considerable time and budget.

We note that in 2013, the Bank will be reviewing its Environmental and Social Policy (2008) as well as the Public Information Policy (2011). This, rather than for individual projects, would be the best time to make suggestions for improvement of our policy requirements if the complainant wishes to recommend that all ESIAs be in a particular language.

Finally, please note that our reference to SRF Gamma was not an endorsement, but rather simply an acknowledgement that Gamma employs a number of reputable scientists and has supported a number of IFI-financed projects and thus has experience with our respective requirements as well as Georgian law.

Annex 3: Georgia Urban Energy (GUE) Response to Complaint

შპს "საქართველო-ურბან ენერჯი" ``Georgia-Urban Enerji``LTD

საქართველო, თბილისი 0162, ჭავჭავაძის გამზ. 37-დ 37-d Chavchavadze Ave. 0162 Tbilisi , Georgia

ტელ/ფაქსი: (995 32) 25 11 83 Tel/Fax: (995 32) 25 11 83

1/30 25 January 2012

To: Mrs. Anoush Begoyan

PCM Officer

Project Complaint Mechanism

European Bank for Reconstruction and Development

One Exchange Square, London EC2A2JN. United Kingdom

Fax: +44 20 7338 7633

Email: pcm@ebrd.com

Subject: Paravani Hydropoer project - Response to the complaint raised by Green Alternative

Dear Mrs. Begoyan,

In response to the letter of Complaint raised by Green Alternative (ref. Complaint on Paravani Hydro Power Plant Project (Georgia) seeking project compliance review, dated 22 December 2011) please find below clarification on the main issues raised in the letter

Minimum flow:

There are hundreds of methods for calculation of the retained flow. In general, the methods based on 1) hydrologic or statistics values, 2) physiographic principles, and 3) velocity and depth of water and 4) methods taking into account ecological parameter are available. Great quantity of methods and formulas for environmental flow calculation demonstrated that no one of them has a good universally valid solution for reserved flow determination. All of the methods have their advantages, shortcomings, and differ by volume of data required for calculation.

With consideration of limited time normally allocated for EIA studies the hydrologic method of retained flow evaluation is the easiest and sometimes the only feasible option. The 10% flow approach used in the ESIA is accepted in more than 25 countries worldwide including the USA - in 16 States - Canada, Australia, Italy, and Turkey for retained flow calculation. The method is based on statistic values and enables natural fluctuations to be taken into account. (The flow is calculated as percentage of average annual value for the river.)

Comparison of this approach with the method based on physiographic parameters of the river for alpine torrent given below is presented to show the range of the values estimated by different methods.

METHODS BASED ON HYDROLOGIC OR STATISTIC VALUES			
GROUP 1	**Based on the average flow rate (MQ) of the river at a given cross section.**	**Min, l/s**	**Max, l/s**
10% f Q (A)	Reserved flow must be higher than 10% of the natural flow rate, so the reserved flow is variable in time. The application of this method requires a continuous measurement of the flow rate at the diversion section, not always easy to do.	Variable	
Lanser (A)	This method suggest a value varying from 5 to 10 % of the mean flow MQ	36	72
CEMAGREF (F)	This method suggest a value varying from 2.5 to 10 % of the mean flow MQ	18	72
Jäger (A)	In the fishing interest this method suggest as minimum value 15% of the mean annual flow MQ	108	108
Montana (USA)	This definition refers to the interest of fishing: High economic importance of fishery: 40-60%; of MQ Low importance of fishery: 10% of MQ	72	431
GROUP 2	**Refers to the minimum mean flow (MNQ) in the river**		
Steinbach (A)	Reserved flow must be at least equal to MNQ measured on a long term basis and eventually divided between winter and summer period.	0	0
Baden-Württemberg (D)	Reserved flow must correspond to 33% of MNQ	0	0
Rheinland-Pfalz (D)	Minimum flow must be 20-50% of MNQ	0	0
Method Hessen (D)	Minimum flow must be 20-90% of MNQ	0	0
GROUP 3	**refers to the prefixed values on the Flow Duration Curve (FDC)**		
Alarm limit value (CH)	As minimum flow necessary to guarantee the "ecological functioning" of a water course at least 20% of Q_{300} (flow rate exceeding 300 days of duration) must flow in the river.	19	19
Matthey (CH)	The minimum requirement for fish life should be determined on empirical basis. It is roughly corresponding to the more frequent flow rate in a long series of years, which usually well fits to Q_{300}.	11	11
Linearised Matthey (CH)	The method apply to flow rate between 0.3 and 3,00 m^3/s	23	23
Büttinger (CH)	For the life of Salmonides the minimum flow should be approximately not less than Q_{347}.	17	17
Falling below values (A)	Reserved flow is the value of flow which can't fall below in the normal hydrologic year for 4 days per year ($Q_{361/NHY}$).	13	13
METHODS BASED ON PHYSIOGRAPHIC PRINCIPLES			
Catchment area (CH)	Reserved flow necessary for conservation of water flora and fauna is described by: $q = q_{355,NHY} \cdot E \cdot K$ (Where E and K are catchment-specific coefficients).	8	8
Constant specific reserved flow (USA)	The reserved flow refers to fishery serviceability and has two possible values: Excellent abundance of fish $q = 9.1\ l/s/km^2$; Normal abundance of fish $q = 2.6 l/s/km^2$	41	143
Constant specific reserved flow Tirol (A)	The reserved flow depends on the geological conditions of the catchment area: Crystalline: $q = 2{,}0\ l/s/km^2$; Limestone $q = 3{,}0\ l/s/km^2$	31	47

Note: Alpine torrent characteristics: catchment area 16.7km^2; slope 12%, width 10m, length 2100m, average flow 719 l/s (0.72 m^3/s).

In this case the methods which refers to the minimum yearly flow MNQ should not be applicable because the torrent is subject to dry up (Q ~ 0) in some periods of the year.

Q300 refers to flow rate exceeding 300 days of duration

Comparison presented above shows that for sure, there is wide range variability in results between considered options and proves the statement that neither of methods is 100% 'correct'. But again, above mentioned methods as opposed to the multi-objective planning with ecological parameters does not require extensive site specific flow observation and survey which is normally not possible to implement in the framework of any EIA.

The regular flow measurements in Georgia stopped in early nineties of the last century, since than the flow is generally estimated based on the water level measurements, using the old 'level vs flow' chart which is not very precise. For the needs of EIA under consideration for calculation of the river flow in the design section analogue method was used. Khertvisi hydrological observation data (the station is located in about 17km downstream, in the confluence of the Mtkvari and Paravani rivers) were taken as a basis. The 54 year long (1937-1991) continuous variation range of the factual flow measurement data were used in calculation of the flow in the design section. The average over the year flow was estimates as 17.4 m^3/sec. The sanitary flow value was given in the EIA report submitted to the Ministry of Environment Protection and Natural Resources (now Ministry of Environment) in 2009. The EIA passed ecological examination procedure following to which environmental permit was issued.

Additional estimates were made by Hydro Dizayn (Turkey) based on the catchment basin approach and the Khertvisi station data. Average flow at the Khertvisi station according to this estimate was 18.746 m^3/sec whereas the average flow at Paravani regulator area was 16.512 m3/sec which proves the existence of additional water sources feeding the river between regulator area and Khertvisi Station. However, Khertvisi station's average flow value was used for calculation of the retained flow in the Paravani from the weir downstream to the Paravani - Mtkvari confluence. While considering the retained flow it should be mentioned that, as the maximum flow diverted for power generation is set as 25 m^3/sec, in April and May the flow in the section of interest will be respectively 5m^3/sec and 10m^3/sec higher than the set value, which means that the average flow downstream the intake will exceed 10% of the year's average.

To ensure that the retained flow in the stream is adequate and preserved, Georgia Urban Energy Ltd installed automatic water level measuring unit in the design intake area (October 2011). In parallel hydrological flow measurements are being carried out. According to the work plan hydrologic survey has been launched. The water flow in the project section is planned to be measured/monitored in low water and high water periods. The new factual flow data together with the readings of the level measuring unit will provide reliable information on the river. Based on the factual water flows and level data reliable flow vs level correlation curve will be plotted. This, in the time being, will help GUE to reduce the frequency of flow measurements to minimum and control the flow based on the permanent level measurement data. The first session of flow measurement will start end of January 2012. Monitoring will cover construction period (three years) and continue for at least two years of operation.

To make sure that altered hydrology has minimum influence of aquatic life, according to the ESAP, GUE carries out the baseline aquatic survey in the section from the intake to the Mtkvari confluence. The baseline study will provide basis for monitoring of fish after commissioning of the HPP scheme. Two surveys will be done. One, winter observation, is already finished with the report due end of January. The second will be done in spring.

Based on results of the survey mitigation and offset measures, including any needed changes in project operations will be identified as stated in the ESAP.